उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक M.A. No. 119 सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT NON-APPLICANT No. 3	M/s. United India Insurance Co. Ltd. , Through Branch Manager, Budhar Road, Shahdol (M.P.)
	VERSUS	
	RESPONDENTS	1. Makhan Prasad, son of Shri Lalloram, aged 44 years, resident of Quarter No. D-233, M.P.B. Colony, Chachai, Tahsil Anuppur, District Shahdol (M.P.) **CLAIMANTS**
		2. Nirmal Kumar Tripathi, son of Vinay Kumar Tipathi, aged 40 years, Occupation-Driver, resident of Madhavgarh, P.S. Kodganwa, District Satna (M.P.), Present resident of Dhanpuri, No.3 Colliery, Amalai, District Shahdol (M.P.)
		3. Ajay Gupta, Son of Dwarka Prasad Gupta, resident of Cinema Road, Budhar, Tahsil Budhar, District Shahdol (M.P.) **NON-APPLICANT NO.1 & 2**
	Dhirendra Mishra, J. **04.05.2007** Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, counsel for the appellant. Shri A.K.Gupta, counsel for respondent No.3. Heard.	

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मामला क्रमांक M.A. No. 119 **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

This is insurer's appeal against the award dated 30th of September 2004 passed by the Additional Motor Accident Claims Tribunal, Manendragarh in Claim Case No.40/2000 whereby a sum of Rs. 60,729/- with interest at the rate of 9% per annum from the date of application has been awarded in favour of the claimant/respondent No.1 for the injuries sustained by him on 26.04.98 when Matador 407 bearing registration No. MP-18/6345 driven rashly and negligently by respondent No. 2 and owned by respondent No.3, overturned.

The only ground argued by the counsel for the appellant is that the offending vehicle is a goods carrier vehicle insured for driver plus one cleaner and the claimant was travelling in the said vehicle as a gratuitous passenger at the time of accident in breach of policy condition. The fact that he was traveling in the vehicle as a *barati*, was admitted by the applicant himself in his statement on oath before the Tribunal. However, the Tribunal has rejected the objection of the appellant in this regard by recording a finding that the onus of proving that the vehicle was being used in violation of the policy condition is upon the Insurance Company and since the Insurance Company has not led any evidence to substantiate the same, it cannot be held that the claimant was the gratuitous passenger in the said vehicle.

Learned counsel for the respondent submitted that where a passenger travels in a goods carrier as a passenger, he does so in

मामला क्रमांक M.A. No. 119/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

his own risk and if he suffers any loss due to accident involving such vehicle the owner or driver cannot be saddled with the responsibility of paying any amount of compensation to such person.

The law in this regard is settled that where the vehicle which is registered as a goods vehicle involved in the accident and in the said accident if a gratuitous passenger suffers injuries the insurer cannot be held liable for paying such compensation to the claimant. For this view, I am fortified by the judgment of ***Oriental Insurance Company Ltd., Vs. Devireddy Konda Reddy & Others*** reported in ***2003 Vol. 1 TAC 481***.

The claimant was Plant Assistant in the M.P. State Electricity Board, Chechai and he was traveling in a goods carrier vehicle as he had to go to Manendragarh in a *Barat*, as is evident from his statement before the Tribunal. There is no pleading or evidence available on record that the claimant was travelling in the said vehicle along with his goods. In these circumstances the finding of the Tribunal that the Insurance Company has failed to prove that the claimant was gratuitous passenger is perverse without considering the admission of the claimant himself.

In the result the appeal is allowed. The impugned award is modified and the appellant/non-applicant No.3 Insurance Company, which has been held liable for payment of compensation

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. No. 1181 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	jointly and severally, is hereby absolved from the liability of the payment of compensation. If any payment is made by the Insurance Company in pursuance of the impugned award, then Insurance Company shall be entitled to recover the same from respondents No. 2 & 3. **Sd/-** **Dhirendra Mishra** **Judge**	